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BERNSTEIN, CUSHNER & KIMMELL, P.C.

ATTORNEYS AT LAW

Jeffrey M. Bernstein
Kenneth L. Kimmell
Erin M. O'Toole
Barbara Kessner Landau
Jonathan S. Klavens

585 Boylston Street, Suite 400
Boston, Massachusetts 02116
(617) 236-4090

Facsimile: (617) 236-4339
E-Mail: bckboston@bck.com
URL: www.bck.com

The firm has attorneys who
are also admitted to practice in
California, District of Columbia,
Idaho, and Vermont

June 26, 2006

VIA HAND DELIVERY

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Joint Petition of Boston Edison Company, Cambridge Electric Light Company,
Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR
Electric for Approval of Merger
D.T.E. 06-40 – *INITIAL COMMENTS OF THE CAPE LIGHT COMPACT*

Dear Secretary Cottrell:

We represent the Cape Light Compact, a municipal aggregator under G.L. c. 164, § 134, that consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"). The Compact is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

On June 12, 2006, the Department received a Joint Petition for Approval of Merger (the "Joint Petition") of Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Canal Electric Company ("Canal") and Commonwealth Electric Company ("Commonwealth" and together with Boston Edison, Cambridge, and Canal, "NSTAR"). The Joint Petition seeks (1) approval, pursuant to G.L. c. 164, § 96, of a proposed merger among and between the aforementioned companies to create a single electric company, NSTAR Electric Company (the "Merger") and (2) confirmation that Boston Edison, to be renamed NSTAR Electric Company, as the surviving corporation after the merger, will retain all the franchise rights and obligations that were previously held by Cambridge and Commonwealth. The Merger provides for, among other things: (1) the consolidation of retail rates for default service, the pension adjustment factor and transmission service; (2) the potential consolidation of distribution rates and transition charges on or after January 1, 2010; (3) the reclassification of Cambridge's 13.8 kilovolt ("kV") facilities as distribution facilities with recovery of associated

Vermont Office:
P.O. Box 205
Woodstock, VT 05091
Telephone: (802) 356-2560
Facsimile: (802) 910-1003
E-Mail: bckvt@bck.com

Mountain States Office:
P.O. Box 1527
Ketchum, ID 83340
Telephone: (208) 727-9734
Facsimile: (208) 727-9735
E-Mail: eoroole@bck.com

costs transferred from transmission to distribution rates; and (4) implementation of uniform depreciation rates. Joint Petition ¶¶ 9-14.

Commonwealth is the local distribution company providing transmission and distribution service to all of the customers within the Compact's member municipalities and providing default service to customers within the Compact's member municipalities who opt out of the Compact's aggregation program.

The Merger cannot be approved unless the Department finds that the Merger and the terms thereof "are consistent with the public interest." G.L. c. 164, § 96; *see also Boston Edison/Commonwealth Energy System Merger*, D.T.E. 99-19 (1999) (*citing Eastern-Colonial Acquisition*, D.T.E. 98-128 (1999), *Eastern-Essex Acquisition*, D.T.E. 98-27 (1998), and *NIPSCO-Bay State Acquisition*, D.T.E. 98-31 (1998)). Those cases established a "no net harm" standard for evaluating proposed mergers. *Eastern-Colonial Acquisition*, D.T.E. 98-128, at 5; *NIPSCO-Bay State Acquisition*, D.T.E. 98-31, at 9-10. Specifically, the petitioners must show that there is an "avoidance of public harm" or that the "public interest would be at least as well served by approval of a proposal as by its denial." *Boston Edison/Commonwealth Energy System Merger*, D.T.E. 99-19, at 10. Stated a different way, to be consistent with the public interest, "[t]he costs or disadvantages of a proposed merger must be accompanied by offsetting benefits that warrant their allowance." *NIPSCO-Bay State Acquisition*, D.T.E. 98-31, at 10.¹

Based on its currently known terms, the Merger does not appear to be consistent with the public interest.

The consolidation of rates contemplated by the Merger poses a risk of unfairness to customers within the Commonwealth service territory. Commonwealth's rates and charges are currently different than those of the other NSTAR companies. For example, for the major residential schedules, the current transmission rate for Boston Edison (1.280¢/kWh) is 84.2% higher, and for Cambridge (3.026¢/kWh) is 335.4% higher, than the current transmission rate for Commonwealth Electric (0.695¢/kWh).² Consolidated transmission rates raise the distinct possibility that customers on Cape Cod and the Islands will be forced to pay a disproportionate share of costs relating to the provision of transmission service to customers in other territories. Consolidation of transmission rates, default service rates, the pension adjustment factor, distribution rates and transition charges across the historic service territories of the NSTAR

¹ The Department may review the following factors in determining whether a proposed merger is consistent with the public interest: (1) effect on rates; (2) effect on the quality of service; (3) resulting net savings; (4) effect on competition; (5) financial integrity of the post-merger entity; (6) fairness of the distribution of resulting benefits between shareholders and ratepayers; (7) societal costs; (8) effect on economic development; and (9) alternatives to the merger. *Mergers and Acquisitions*, D.P.U. 93-167-A at 7-9 (1995).

² NSTAR Electric Summary of Electric Delivery Service Rates, M.D.T.E. 190 (available at http://www.nstaronline.com/ss/customer_service/rates/tariffs/190.pdf).

companies may negatively affect the Compact and municipal, residential and commercial ratepayers on Cape Cod and Martha's Vineyard.

NSTAR's assurances to the contrary are cold comfort. For example, NSTAR asserts that transmission rates for Commonwealth customers will rise only a little more than 1%, NSTAR-CLV-1 at 20 (Testimony of Christine L. Vaughan), but this assertion is suspect because it is based on actual 2005 costs and these costs have been adjusted to exclude congestion costs, *id.* at n.1. Future transmission costs for NEMA and Boston are likely to be higher than 2005 costs as they are increased to cover the cost of the 345kV Transmission Reliability Project, now expected to cost more than \$234 million. ISO New England Regional System Plan 2005 at 87 (Oct. 20, 2005). Nor is it clear that NEMA congestion costs (largely related to generation from Mystic Units 8 and 9) are likely to end anytime soon.³ See ISO New England Reliability Agreements – Annual Fixed Costs Summary, Agreements Effective or Pending at FERC, Status Updates through Apr. 28, 2006.⁴ The Merger should not be approved unless NSTAR presents adequate expert testimony on rate impacts and proposes tariffs that represent an equitable allocation of costs and benefits across existing service territories.

The Merger also appears to be inconsistent with the public interest because it fails to address how to preserve valuable data collection and reporting with respect to regions within the merged service territory. Without adequate data collection and reporting requirements, the Merger could result in the loss of regional data valuable to the Compact and other market participants. NSTAR currently reports customer numbers, loads, investments, costs, as well as service quality and reliability, separately for each of its three distribution companies through, for example, periodic filings with the Department and with the Federal Energy Regulatory Commission ("FERC"). These data are invaluable for the Compact as well as other market participants and analysts. The terms of the Merger should specifically require NSTAR to provide, among other things, certain data needed by municipalities that have adopted or are considering adopting a municipal aggregation plan.

The Merger also appears to be inconsistent with the public interest because the terms of the Merger fail to ensure that the surviving corporation will make adequate and equitable commitments to maintenance and upgrading of the transmission and distribution system across the historic service territories. The Compact particularly objects to the absence of any

³ Similarly, while NSTAR asserts that prices for default service supply in the NEMA load zone were only 1.5% to 3.7% higher than prices for default service supply in the SEMA load zone in 2004 and 2005, NSTAR-CLV-1 at 14, these calculations were based on an analysis of energy prices in the real-time market whereas default service supply is procured in forward markets where the differences are much more significant, *see, e.g.*, Electric Restructuring in Massachusetts – Default Service – Monthly Default Service Price (available at <http://www.mass.gov/dte/restruct/competition/defaultservice.htm>). In fact, Boston Edison default service prices have exceeded Commonwealth default service prices by roughly 10%, not the 1% to 4% that NSTAR reports. *See id.*

⁴ Available at www.iso-ne.com/genrtion_resrcs/reports/rmr/rmr_agreements_summary_fixed.xls.

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commitment on the part of the surviving corporation to conduct necessary maintenance and upgrading of the unreliable transmission cables from the mainland to Martha's Vineyard.

Finally, the Merger appears to be inconsistent with the public interest because, to the extent that there are indeed decreases in distribution service costs that will result from efficiencies achieved through the Merger, NSTAR shareholders will receive a disproportionate benefit for those cost reductions because the settlement approved in D.T.E. 05-85 established a distribution rate scheme that is effectively independent of changes in costs. *See* NSTAR CLV-1 at 8 ("The future level of revenues for NSTAR Electric distribution service was resolved by the Settlement Agreement approved by the Department in D.T.E. 05-85."). The Merger should not be approved unless its terms result in a fair distribution of merger benefits between stockholders and customers.

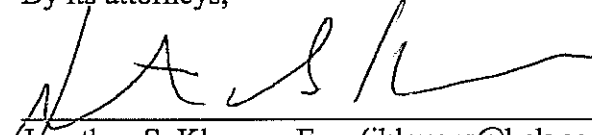
The Compact respectfully requests that the Department establish a procedural schedule that allows for meaningful participation in this proceeding by the Compact and other stakeholders.

The Compact appreciates the opportunity to submit the foregoing comments.

Sincerely,

THE CAPE LIGHT COMPACT

By its attorneys,



Jonathan S. Klavens, Esq. (jklavens@bck.com)
Jeffrey M. Bernstein, Esq. (jbernstein@bck.com)
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116
617-236-4090 (voice)
617-236-4339 (fax)

JSK/drb

cc: Joan Foster Evans, Hearing Officer (by hand)
Robert N. Werlin, Esq., Keegan Werlin LLP (via email and first class mail)
Margaret Downey, Cape Light Compact (via first class mail)